UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,404	03/09/2004	Johnny Mikhael Matta	6655P029X	5588

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EXAMINER
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ART UNIT	PAPER NUMBER
2471	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	**Applicant(s)**
Office Action Summary	10/797,404	MATTA ET AL.
	Examiner	**Art Unit**	
	MOHAMMAD S. ADHAMI	2471	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>21 September 2009</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-35,57-59 and 63</u> is/are pending in the application.

    4a) Of the above claim(s) <u>57-59 and 63</u> is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-35</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
            application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail. Date _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

- Applicant's amendment filed 9/21/2009 is acknowledged.

- Claims 1,12,13,20-22,30,35,57 and 59 have been amended.

- Claims 36-56 and 60-62 are cancelled.

- Claim 63 has been added.

- Claims 1-35,57-59, and 63 are pending.

Election/Restrictions

1.   Newly submitted claims 57-59 and 63 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The newly amended claims 57-59 and 63 are directed towards ping request interleaved with voice packets, which are different from the original claims that are directed to consecutive time-stamp request packets.

        Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 57-59 and 63 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Double Patenting

2.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees.   A nonstatutory

obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3.   Claims 1-35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 43 of U.S. Patent No. 7,525,923. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1,20-22, and 35 are substantially the same as claim 43 (referred to as Matta below).

Re claims 1,20, and 21:

Matta discloses *probing an end-to-end path to identify addresses of all hops on the end-to-end path* (Col.13 lines 38-39 "probing an end-to-end path to identify addresses of all hops on the end-to-end path").

Matta further discloses *generating and transmitting by a terminal node on the end-to-end path, a first time-stamp request packet to a first hop* (Col. 13 line 40 "generating a group of five time-stamp request packets to be transmitted" and Col.13 line 42 "transmitting the group of five time-stamp request packets" and Col.13 lines 51-52 "the first one to the corresponding hop") *and a subsequent*

two time-stamp request packets to a second hop (Col. 13 line 52 "the next two to the subsequent hop").

Matta further discloses *wherein the first time-stamp request packet and the subsequent two time-stamp request packets are three consecutive request packets* (Col. 13 line 50 transmitting three consecutive time-stamp requests).

Matta further discloses *the first hop and the second hop are two consecutive hops on the end-to-end path* (Col.13 lines 51-52 the first one to the corresponding hop and the next two to the subsequent hop).

Matta further discloses *receiving an initial time stamp from the first hop and two subsequent time stamps from the second hop in response to the three consecutive request packets* (Col.13 lines 62-65 "generating a first time-stamp in response to the firs time-stamp request packets with the corresponding hop; generating a second time-stamp in response to the second time-stamp request packets with a subsequent hop").

Matta further discloses *generating and transmitting by the terminal node a first packet of a pair of consecutive time-stamp request packets to the first hop and a second packet of the pair to the second hop* (Col. 13 line 40 "generating a group of five time-stamp request packets to be transmitted" and Col.13 lines 53-55 "transmitting the remaining two time-stamp request to the corresponding hop; the first one to the corresponding hop, and the next one to the subsequent hop, wherein the remaining two time-stamp request packets are a pair of time-stamp request packets comprising a first time-stamp request packet and a second time-

stamp request packet, and wherein no interfering traffic is received between the

first and second time-stamp request packets - where two packets with no

interfering traffic between them are consecutive packets).

Matta further discloses *receiving and processing at least one time-stamp*

generated by the two consecutive hops to produce at least one QoS estimate of

a link that couples the two consecutive hops on the end-to-end path (Col.14 lines

1-4 processing the first time-stamp and the second time-stamp of the pair of

time-stamp request packets to determine the estimate of the total time spent by

the time-stamp request packet as the corresponding hop - where the estimate of

the total time spent is a QoS estimate of a link).

Re claims 2-19:

Claim 2 is substantially the same as claim 2.

Claim 3 is substantially the same as claim 5.

Claim 4 is substantially the same as claim 5.

Claim 5 is substantially the same as claim 9.

Claim 6 is substantially the same as claim 43.

Claim 7 is substantially the same as claim 10.

Claims 8-10 are substantially the same as claim 9.

Claim 11 is substantially the same as claim 14.

Claim 12 is substantially the same as claim 5.

Claim 13 is substantially the same as claim 6.

Claim 14 is substantially the same as claim 17.

        Claim 15 is substantially the same as claim 43.

        Claim 16 is substantially the same as claim 19.

        Claim 17 is substantially the same as claim 20.

        Claim 18 is substantially the same as claim 43.

        Claim 19 is substantially the same as claim 22.

4.   Claims 22-35 are rejected on the ground of nonstatutory obviousness-type

double patenting as being unpatentable over claim 43 of U.S. Patent No. 7,525,923 in

view of Patel (US App. 2003/0236827).

Re claims 22 and 35:

        Matta discloses *probing an end-to-end path to identify addresses of all*

        hops on the end-to-end path (Col.13 lines 38-39 "probing an end-to-end path to

        identify addresses of all hops on the end-to-end path").

        Matta further discloses *generating and transmitting by a terminal node on*

        the end-to-end path, a first time-stamp request packet to a first hop (Col. 13 line

        40 "generating a group of five time-stamp request packets to be transmitted" and

        Col.13 line 42"transmitting the group of five time-stamp request packets" and

        Col.13 lines 51-52 "the first one to the corresponding hop") *and a subsequent*

        two time-stamp request packets to a second hop (Col. 13 line 52 "the next two to

        the subsequent hop").

        Matta further discloses *wherein the first time-stamp request packet and*

        the subsequent two time-stamp request packets are three consecutive request

        packets (Col. 13 line 50 transmitting three consecutive time-stamp requests).

Matta further discloses *the first hop and the second hop are two consecutive hops on the end-to-end path* (Col.13 lines 51-52 the first one to the corresponding hop and the next two to the subsequent hop).

Matta further discloses *receiving an initial time stamp from the first hop and two subsequent time stamps from the second hop in response to the three consecutive request packets* (Col.13 lines 62-65 "generating a first time-stamp in response to the firs time-stamp request packets with the corresponding hop; generating a second time-stamp in response to the second time-stamp request packets with a subsequent hop").

Matta further discloses *generating and transmitting by the terminal node a first packet of a pair of consecutive time-stamp request packets to the first hop and a second packet of the pair to the second hop* (Col. 13 line 40 "generating a group of five time-stamp request packets to be transmitted" and Col.13 lines 53-55 "transmitting the remaining two time-stamp request to the corresponding hop; the first one to the corresponding hop, and the next one to the subsequent hop, wherein the remaining two time-stamp request packets are a pair of time-stamp request packets comprising a first time-stamp request packet and a second time-stamp request packet, and wherein no interfering traffic is received between the first and second time-stamp request packets - where two packets with no interfering traffic between them are consecutive packets).

Matta further discloses *receiving and processing at least one time-stamp generated by the two consecutive hops to produce at least one QoS estimate of*

a link that couples the two consecutive hops on the end-to-end path (Col.14 lines 1-4 processing the first time-stamp and the second time-stamp of the pair of time-stamp request packets to determine the estimate of the total time spent by the time-stamp request packet as the corresponding hop - where the estimate of the total time spent is a QoS estimate of a link).

Matta does not explicitly disclose *spoofing the origination address to that of another node on the network.*

Patel discloses *spoofing the origination address to that of another node on the network* (Fig.3 ref.308 and Para.[0036] – where the spoofed address receives the replies).

Matta and Patel are analogous because they both pertain to data communications.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Matta to include address spoofing as taught by Patel in order to avoid congestion by reducing the amount of replies receive (Patel Para.[0036] In this way, one or more application running at the mobile node may be caused to cutback the rate of data or other information being transmitted by such applications to a level which is appropriate for the new link bandwidth).

Re claims 23-34:

Claims 23-34 are substantially the same as claims 24-35, respectively.

Conclusion

5.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to MOHAMMAD S. ADHAMI whose telephone number is

(571)272-8615. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Chi Pham can be reached on (571)272-3179. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mohammad S Adhami/   /Chi H Pham/
Examiner, Art Unit 2471   Supervisory Patent Examiner, Art
                                                 Unit 2471